

AMENDED IN ASSEMBLY APRIL 11, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 361

Introduced by Assembly Member Sharon Runner

February 11, 2005

An act to ~~add Section 8214.7 to the Government Code~~ *amend Section 1189 of the Civil Code, to amend Sections 8206 and 8225 of, and to add Sections 8214.7, 8214.8, and 8228.1 to, the Government Code, and to amend Section 470 of the Penal Code, relating to notaries public.*

LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Sharon Runner. Notaries public.

Existing law generally sets forth the procedures for proof and acknowledgment of instruments executed before notaries public and prescribes administrative penalties and civil fines for violation of provisions that govern notaries public.

This bill would provide that a notary public who completes and seals a certificate of acknowledgment with the knowledge that a person whose name is subscribed to the instrument that is being acknowledged as having executed the instrument ~~in the presence of the notary public~~ did not, in fact, personally appear before the notary public at the time ~~of the execution of the instrument~~ *he or she completes and seals a certificate of acknowledgment of the instrument, as specified*, is guilty of a misdemeanor. *The bill would further make it a misdemeanor for notary public to willfully fail to perform the required duties of a notary public or to willfully fail to keep the seal of the notary under his or her direct and exclusive control. The bill*

would also make it a misdemeanor for any person to solicit, coerce, or in any manner influence a notary public to perform an improper notarial act, as specified. The bill would require a court to revoke the commission of a notary public, upon conviction of any offense related to his or her duties, or of any felony and would require surrender to the court of the seal of the notary public, which would then be forwarded to the Secretary of State. The bill would make other related changes. By creating a new ~~crime~~ crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1189 of the Civil Code is amended to
- 2 read:
- 3 1189. (a) Any certificate of acknowledgment taken within
- 4 this state shall be in ~~substantially~~ the following form:

1 State of California)
2 County of _____)
3

4 On _____ before me,
5 (here insert name and title of the
6 officer), personally appeared _____,
7 personally known to me (or proved to me on the basis of
8 satisfactory evidence) to be the person(s) whose name(s) is/are
9 subscribed to the within instrument and acknowledged to me that
10 he/she/they executed the same in his/her/their authorized
11 capacity(ies), and that by his/her/their signature(s) on the
12 instrument the person(s), or the entity upon behalf of which the
13 person(s) acted, executed the instrument.
14

15 WITNESS my hand and official seal.
16

17 Signature _____ (Seal)
18

19 (b) Any certificate of acknowledgment taken in another place
20 shall be sufficient in this state if it is taken in accordance with the
21 laws of the place where the acknowledgment is made.

22 (c) On documents to be filed in another state or jurisdiction of
23 the United States, a California notary public may complete any
24 acknowledgment form as may be required in that other state or
25 jurisdiction on a document, provided the form does not require
26 the notary to determine or certify that the signer holds a
27 particular representative capacity or to make other determinations
28 and certifications not allowed by California law.

29 (d) An acknowledgment provided prior to January 1, 1993,
30 and conforming to applicable provisions of former Sections
31 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by
32 Chapter 335 of the Statutes of 1990, shall have the same force
33 and effect as if those sections had not been repealed.

34 *SEC. 2. Section 8206 of the Government Code is amended to*
35 *read:*

36 8206. (a) (1) A notary public shall keep one active
37 sequential journal at a time, of all official acts performed as a
38 notary public. The journal shall be kept in a locked and secured
39 area, under the direct and exclusive control of the notary. Failure
40 to secure the journal shall be cause for the Secretary of State to

1 take administrative action against the commission held by the
2 notary public pursuant to Section 8214.1.

3 (2) The journal shall be in addition to and apart from any
4 copies of notarized documents that may be in the possession of
5 the notary public and shall include all of the following:

6 (A) Date, time, and type of each official act.

7 (B) Character of every instrument sworn to, affirmed,
8 acknowledged, or proved before the notary.

9 (C) The signature of each person whose signature is being
10 notarized.

11 (D) A statement as to whether the identity of a person making
12 an acknowledgment or taking an oath or affirmation was based
13 on personal knowledge or satisfactory evidence. If identity was
14 established by satisfactory evidence pursuant to Section 1185 of
15 the Civil Code, then the journal shall contain the signature of the
16 credible witness swearing or affirming to the identity of the
17 individual or the type of identifying document, the governmental
18 agency issuing the document, the serial or identifying number of
19 the document, and the date of issue or expiration of the
20 document.

21 (E) If the identity of the person making the acknowledgment
22 or taking the oath or affirmation was established by the oaths or
23 affirmations of two credible witnesses whose identities are
24 proven upon the presentation of satisfactory evidence, the type of
25 identifying documents, the identifying numbers of the documents
26 and the dates of issuance or expiration of the documents
27 presented by the witnesses to establish their identity.

28 (F) The fee charged for the notarial service.

29 (G) ~~If the~~ *For every* document to be notarized ~~is a deed,~~
30 ~~quitclaim deed, or deed of trust affecting real property,~~ the notary
31 public shall require the party signing the document to place his or
32 her right thumbprint in the journal. If the right thumbprint is not
33 available, then the notary shall have the party use his or her left
34 thumb, or any available finger and shall so indicate in the journal.
35 If the party signing the document is physically unable to provide
36 a thumbprint or fingerprint, the notary shall so indicate in the
37 journal and shall also provide an explanation of that physical
38 condition. ~~This paragraph shall not apply to a trustee's deed~~
39 ~~resulting from a decree of foreclosure or a nonjudicial~~

1 ~~foreclosure pursuant to Section 2924 of the Civil Code, nor to a~~
2 ~~deed of reconveyance.~~

3 (b) If a sequential journal of official acts performed by a
4 notary public is stolen, lost, misplaced, destroyed, damaged, or
5 otherwise rendered unusable as a record of notarial acts and
6 information, the notary public shall immediately notify the
7 Secretary of State by certified or registered mail. The notification
8 shall include the period of the journal entries, the notary public
9 commission number, and the expiration date of the commission,
10 and when applicable, a photocopy of any police report that
11 specifies the theft of the sequential journal of official acts.

12 (c) Upon written request of any member of the public, which
13 request shall include the name of the parties, the type of
14 document, and the month and year in which notarized, the notary
15 shall supply a photostatic copy of the line item representing the
16 requested transaction at a cost of not more than thirty cents
17 (\$0.30) per page.

18 (d) The journal of notarial acts of a notary public is the
19 exclusive property of that notary public, and shall not be
20 surrendered to an employer upon termination of employment,
21 whether or not the employer paid for the journal, or at any other
22 time. The notary public shall not surrender the journal to any
23 other person, except the county clerk, pursuant to Section 8209,
24 or to a peace officer, as defined in Sections 830.1, 830.2, and
25 830.3 of the Penal Code, acting in his or her official capacity and
26 within his or her authority, in response to a criminal search
27 warrant signed by a magistrate and served upon the notary public
28 by the peace officer. The notary public shall obtain a receipt for
29 the journal, and shall notify the Secretary of State by certified
30 mail within 10 days that the journal was relinquished to a peace
31 officer. The notification shall include the period of the journal
32 entries, the commission number of the notary public, the
33 expiration date of the commission, and a photocopy of the
34 receipt. The notary public shall obtain a new sequential journal.
35 If the journal relinquished to a peace officer is returned to the
36 notary public and a new journal has been obtained, the notary
37 public shall make no new entries in the returned journal. A
38 notary public who is an employee shall permit inspection and
39 copying of journal transactions by a duly designated auditor or
40 agent of the notary public's employer, provided that the

1 inspection and copying is done in the presence of the notary
2 public and the transactions are directly associated with the
3 business purposes of the employer. The notary public, upon the
4 request of the employer, shall regularly provide copies of all
5 transactions that are directly associated with the business
6 purposes of the employer, but shall not be required to provide
7 copies of any transaction that is unrelated to the employer's
8 business. Confidentiality and safekeeping of any copies of the
9 journal provided to the employer shall be the responsibility of
10 that employer.

11 (e) The notary public shall provide the journal for examination
12 and copying in the presence of the notary public upon receipt of
13 a subpoena duces tecum or a court order, and shall certify those
14 copies if requested.

15 ~~SECTION 1.~~

16 *SEC. 3.* Section 8214.7 is added to the Government Code, to
17 read:

18 8214.7. In addition to any commissioning or disciplinary
19 sanction or penalty assessed pursuant to Section 8214.15, a
20 notary public who completes and seals a certificate of
21 acknowledgment, as prescribed in Section 1189 of the Civil
22 Code, with the knowledge that a person whose name is
23 subscribed to the instrument that is being acknowledged as
24 having executed the instrument ~~in the presence of the notary~~
25 ~~public~~, did not, in fact, personally appear before the notary public
26 at the time of the execution of the instrument, ~~is guilty of a~~
27 ~~misdemeanor.~~ *he or she completes and seals a certificate of*
28 *acknowledgment of the instrument, or who shall complete and*
29 *seal a certificate of acknowledgment of an instrument prior to the*
30 *instrument being executed by any person whose name is to be*
31 *subscribed to the instrument, is guilty of a public offense, and*
32 *upon conviction thereof, shall be punished either by*
33 *imprisonment in a county jail not to exceed one year, a fine not*
34 *to exceed one thousand dollars (\$1,000), or both that*
35 *imprisonment and fine.*

36 *SEC. 4.* Section 8214.8 is added to the Government Code, to
37 read:

38 8214.8. *Upon conviction of any offense in this chapter, or of*
39 *Section 6203, or of any felony, of a person commissioned as a*
40 *notary public, in addition to any other penalty, the court shall*

1 *revoke the commission of the notary public, and shall require the*
2 *notary public to surrender to the court with the seal of the notary*
3 *public. The court shall forward the seal, together with a certified*
4 *copy of the judgment of conviction, to the Secretary of State.*

5 *SEC. 5. Section 8225 of the Government Code is amended to*
6 *read:*

7 *8225. (a) Any person who solicits, coerces, or in any manner*
8 *influences a notary public to perform an improper notarial act*
9 *knowing—such that act to be an improper notarial act, including*
10 *any act required of a notary public under Section 8206, shall be*
11 *guilty of a misdemeanor.*

12 *(b) Any person who solicits, coerces, or in any manner*
13 *influences a notary public to perform an improper notarial act,*
14 *including any act required of a notary public under Section 8206,*
15 *on an instrument or document affecting title to, or placing an*
16 *encumbrance on, real property consisting of a single-family*
17 *residence containing not more than four dwelling units, knowing*
18 *that act to be an improper notarial act, is guilty of a public*
19 *offense, and upon conviction therefor, shall be punished by*
20 *imprisonment in a county jail not to exceed one year, a fine not*
21 *to exceed one thousand dollars (\$1,000), or both that*
22 *imprisonment and fine.*

23 *SEC. 6. Section 8228.1 is added to the Government Code, to*
24 *read:*

25 *8228.1. (a) Any notary public who willfully fails to perform*
26 *any duty required of a notary public under Section 8206, or who*
27 *willfully fails to keep the seal of the notary public under the*
28 *direct and exclusive control of the notary public, or who*
29 *surrenders the seal of the notary public to any person not*
30 *otherwise authorized by law to possess the seal of the notary,*
31 *shall be guilty of a misdemeanor.*

32 *(b) For the purposes of this section, five or more acts of failing*
33 *to perform those duties required of a notary public under Section*
34 *8206, or a notary public who willfully fails to keep the seal of the*
35 *notary public under the direct and exclusive control of the notary*
36 *public or who surrenders the seal of the notary public to any*
37 *person not otherwise authorized by law to possess the seal of the*
38 *notary public, occurring within a period of 12 months, shall*
39 *create a rebuttable presumption that the notary public was acting*
40 *willfully. This rebuttable presumption shall be in addition to, and*

1 *not exclusive of, any other proof or evidence that the notary*
2 *public was acting in a willful manner.*

3 *(c) The penalty provided by this section is not an exclusive*
4 *remedy, and does not affect any other relief or remedy provided*
5 *by law.*

6 *SEC. 7. Section 470 of the Penal Code is amended to read:*

7 470. (a) Every person who, with the intent to defraud,
8 knowing that he or she has no authority to do so, signs the name
9 of another person or of a fictitious person to any of the items
10 listed in subdivision (d) is guilty of forgery.

11 (b) Every person who, with the intent to defraud, counterfeits
12 or forges the seal or handwriting of another is guilty of forgery.

13 (c) Every person who, with the intent to defraud, alters,
14 corrupts, or falsifies any record of any will, codicil, conveyance,
15 or other instrument, the record of which is by law evidence, or
16 any record of any judgment of a court or the return of any officer
17 to any process of any court, is guilty of forgery.

18 (d) Every person who, with the intent to defraud, falsely
19 makes, alters, forges, or counterfeits, utters, publishes, passes or
20 attempts or offers to pass, as true and genuine, any of the
21 following items, knowing the same to be false, altered, forged, or
22 counterfeited, is guilty of forgery: any check, bond, bank bill, or
23 note, cashier's check, traveler's check, money order, post note,
24 draft, any controller's warrant for the payment of money at the
25 treasury, county order or warrant, or request for the payment of
26 money, receipt for money or goods, bill of exchange, promissory
27 note, order, or any assignment of any bond, writing obligatory, or
28 other contract for money or other property, contract, due bill for
29 payment of money or property, receipt for money or property,
30 passage ticket, lottery ticket or share purporting to be issued
31 under the California State Lottery Act of 1984, trading stamp,
32 power of attorney, certificate of ownership or other document
33 evidencing ownership of a vehicle or undocumented vessel, or
34 any certificate of any share, right, or interest in the stock of any
35 corporation or association, or the delivery of goods or chattels of
36 any kind, or for the delivery of any instrument of writing, or
37 acquittance, release or discharge of any debt, account, suit,
38 action, demand, or any other thing, real or personal, or any
39 transfer or assurance of money, certificate of shares of stock,
40 goods, chattels, or other property whatever, or any letter of

1 attorney, or other power to receive money, or to receive or
2 transfer certificates of shares of stock or annuities, or to let, lease,
3 dispose of, alien, or convey any goods, chattels, lands, or
4 tenements, or other estate, real or personal, *or falsifies the*
5 *acknowledgment of any notary public, or any notary public who*
6 *issues an acknowledgment knowing it to be false*; or any matter
7 described in subdivision (b).

8 (e) Upon a trial for forging any bill or note purporting to be
9 the bill or note of an incorporated company or bank, or for
10 passing, or attempting to pass, or having in possession with intent
11 to pass, any forged bill or note, it is not necessary to prove the
12 incorporation of the bank or company by the charter or act of
13 incorporation, but it may be proved by general reputation; and
14 persons of skill are competent witnesses to prove that the bill or
15 note is forged or counterfeited.

16 ~~SEC. 2:~~

17 *SEC. 8.* No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the
22 penalty for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition of a
24 crime within the meaning of Section 6 of Article XIII B of the
25 California Constitution.